

U.S. Department of Justice



United States Attorney  
Southern District of New York

86 Chambers Street, 3rd Floor  
New York, New York 10007

June 12, 2008

BY FACSIMILE (914-390-4085)

The Honorable Charles L. Brieant  
United States District Judge  
United States Courthouse  
300 Quarropas Street, Room 275  
White Plains, New York 10601-4150

Re: Ruszkievicz v. Lauer, 07 Civ. 10287 (CLB)

6/13/08

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**MEMO ENDORSED**

*Application Granted -  
As Ordered*

*Charles L. Brieant*  
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Dear Judge Brieant:

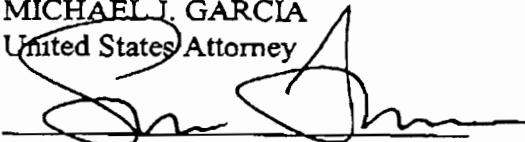
This Office represents the defendant in the above-referenced *Bivens* case, brought against an officer of the U.S. Fish & Wildlife Service. I write to request, on consent, a *nunc pro tunc* extension of time for defendant to submit a motion for summary judgment on grounds of qualified immunity.

Your Honor's form scheduling order contains a provision requiring a defendant planning to raise a qualified immunity defense to depose plaintiff within 30 days of the order and to move for dismissal or summary judgment 30 days thereafter. However, counsel for both parties completed the form at sidebar during an initial conference, in some haste, and did not notice this provision before handing the form to the courtroom deputy. Consequently, undersigned counsel did not schedule plaintiff's deposition until after the exchange of document discovery, as in the normal course. As a result, defendant unwittingly exceeded the 30-day deadline set in the scheduling order for deposing the plaintiff in preparation for a qualified immunity motion. Undersigned counsel did not realize his error until reviewing his case file this week.

In any event, plaintiff's deposition is scheduled for next Thursday, June 19, 2008, and defendant will be ready to move for summary judgment on qualified immunity grounds within 30 days thereafter. Plaintiff's counsel has consented to staying all further discovery, including the deposition of the defendant, to allow litigation of the motion. Defendant therefore respectfully requests that the Court extend the time for defendant to move for summary judgment on qualified immunity grounds until July 18, 2008, and that the Court stay any further discovery pending a decision on the motion. This is the first request made by either party for an extension of the discovery schedule. The granting of this request would have no effect on the ready-for-trial date, which is not scheduled until April 12, 2009.

Thank you for your consideration of this request. Undersigned counsel sincerely regrets overlooking the provision in the Court's scheduling order applicable to qualified immunity cases, and has taken steps to advise all Civil AUSAs in this district of the provision in order to prevent such oversights from occurring again in the future.

Respectfully,

MICHAEL J. GARCIA  
United States Attorney  
  
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Assistant United States Attorney  
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cc: Robert N. Isseks, Esq. (by facsimile: 845-341-1760)